

## **EXHIBIT C**

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE  
 3 DISTRICT OF MASSACHUSETTS

4 TIMOTHY L. LA FRENIER,  
 Plaintiff  
 5  
 6 VS. NO. 04-40114-FDS  
 7 MARY ANNE KINIREY, DANIEL  
 MORRISON, THE CHIEF OF  
 8 POLICE, "JOHN DOE", and  
 THE TOWN OF TOWNSEND,  
 Defendants  
 9  
 10  
 11  
 12 DEPOSITION of MARY ANNE KINIREY, taken at the  
 13 request of the plaintiff, pursuant to Rule 30 of  
 14 the Federal Rules of Civil Procedure, before  
 15 Michael Gruber, a notary public in and for the  
 16 Commonwealth of Massachusetts, on July 18, 2005,  
 17 commencing at 10:10 a.m., at the offices of Sean  
 18 Gallagher, Esq., 74 Elm Street, Worcester,  
 19 Massachusetts.  
 20  
 21  
 22  
 23  
 24

Page 2

1 A P P E A R A N C E S:  
 2 FOR THE PLAINTIFF:  
 3 SEAN J. GALLAGHER, ESQ.  
 74 Elm Street  
 4 Worcester, Massachusetts 01609  
 5  
 6 FOR THE DEFENDANTS:  
 7 JOSEPH L. TEHAN, JR., ESQ.  
 KOPELMAN AND PAIGE, P.C.  
 31 St. James Street  
 8 Boston, Massachusetts 02116  
 9  
 10  
 11 Also Present: Daniel T. Morrison  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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1 I N D E X  
 2 DEPONENT: MARY ANNE KINIREY

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1 MR. TEHAN: I think we can agree that  
 2 all objections except as to form and motions to  
 3 strike will be reserved until the time of trial.  
 4 We will waive notarization and filing,  
 5 but I would like each defendant to have the  
 6 opportunity to read and sign the transcript, and  
 7 I believe we could agree that the transcript will  
 8 be deemed signed as transcribed if no changes are  
 9 made within 30 days of counsel's receipt.  
 10 Would that be acceptable?  
 11 MR. GALLAGHER: That's agreeable, sure.  
 12  
 13  
 14 MARY ANNE KINIREY,  
 15 having been satisfactorily identified  
 16 by the production of her State-issued  
 17 photo identification, and duly sworn by  
 18 the Notary Public, was examined and  
 19 testified as follows:  
 20  
 21 EXAMINATION BY MR. GALLAGHER:  
 22  
 23 Q. My name is Sean Gallagher. I represent  
 24 the plaintiff in this case. His name is Timothy

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1 You may answer. Give him your  
 2 understanding.  
 3 A. It's my understanding that probable  
 4 cause is the knowledge -- or, after viewing or  
 5 watching a person, or statements made by a  
 6 person, that I have probable cause to move --  
 7 either make an arrest, do field sobriety tests or  
 8 bring it to the next level up.  
 9 Q. Okay. What's the next level up?  
 10 A. It depends what the situation is.  
 11 Q. Okay.  
 12 A. Place him under arrest, ask him to  
 13 perform field sobrieties. If it's not an OUI  
 14 case, something -- summons them. I mean, whatever  
 15 the crime is.  
 16 Q. Okay. Can you give a more precise  
 17 definition of what probable cause is?  
 18 MR. TEHAN: He's asking you in a  
 19 general sense, not linked to a particular crime,  
 20 I believe.  
 21 Q. Yes, in a general sense.  
 22 A. My belief or knowledge that a crime  
 23 had been committed.  
 24 Q. The academy occurred in 1995?

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1 A. In 1994.  
 2 Q. 1994. You successfully completed the  
 3 academy?  
 4 A. Yes.  
 5 Q. How soon after that were you hired as  
 6 a Townsend police officer?  
 7 A. I was sworn in in February of 2005 --  
 8 I mean, I'm sorry, 1995.  
 9 Q. What would the gap have been between  
 10 finishing the academy and being sworn in,  
 11 time-wise?  
 12 A. The town -- the --  
 13 MR. TEHAN: He's asking the duration.  
 14 A. How long? I'm sorry.  
 15 Q. You finished the academy, and then a  
 16 certain time went by before you were sworn in as  
 17 a police officer. So I want to know how much time  
 18 went by.  
 19 A. I believe it was two months.  
 20 Q. After being sworn in as a police  
 21 officer periodically did you receive further  
 22 training and instruction in how to be a police  
 23 officer?  
 24 A. Yes.

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1 Q. How often would that occur?  
 2 A. Couple of times a year.  
 3 Q. How would that be done? Would it be  
 4 formal classes? Would you go someplace to receive  
 5 further training and instruction?  
 6 A. Classroom training? Yes.  
 7 Q. And that would be twice a year?  
 8 A. Couple of times a year, yes.  
 9 Q. Where would those training sessions  
 10 be?  
 11 A. As of late -- our police department.  
 12 Q. Do you know who would be the  
 13 instructors?  
 14 A. Yes.  
 15 Q. Who would those be?  
 16 A. The last class was Lieutenant Bozikas,  
 17 Fitchburg P.D.. I don't know if I said his name  
 18 correctly. Lieutenant Bozikas.  
 19 Q. During those training sessions,  
 20 instruction sessions, there would be an officer  
 21 who would be higher up in rank, more experienced?  
 22 A. Yes.  
 23 Q. I want to call your attention to June  
 24 15, 2001. I would ask you to take a look at this

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1 document, and I'll provide one to your counsel.  
 2 MR. TEHAN: Thank you.  
 3 (Handed to witness.)  
 4 Q. I would ask you to take a look at it.  
 5 MR. GALLAGHER: Here's one for you. I  
 6 believe they're the same document.  
 7 (Handed to Mr. Tehan.)  
 8 MR. TEHAN: Thank you.  
 9 Just look it over and let him know  
 10 when you're done.  
 11 (Witness examining document.)  
 12 Q. Do you recognize that document?  
 13 A. Yes.  
 14 Q. And that's a police report written by  
 15 you, page 2 through page --  
 16 A. 5.  
 17 MR. TEHAN: I think that her report  
 18 states on it pages 1 to 4, but they are pages 2  
 19 to 5 with the exhibit she's got in front of her.  
 20 Q. Do you recognize what the first page  
 21 is of that collection?  
 22 A. Yes.  
 23 Q. And what is that?  
 24 A. It's a complaint, a criminal

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1 complaint.  
 2 MR. GALLAGHER: Can that be marked as  
 3 an exhibit, her document?  
 4 (Document marked.)  
 5 Q. With regard to the police report, have  
 6 you had an opportunity to review that in the  
 7 recent past, last couple of weeks or something  
 8 like that?  
 9 A. Yes.  
 10 Q. When is the last time you looked at  
 11 it?  
 12 A. Monday. Last Monday.  
 13 Q. You read the whole thing last Monday?  
 14 A. Reviewed it.  
 15 Q. All right. Did you read it from  
 16 beginning to end, last Monday?  
 17 A. No, I did not.  
 18 Q. I want to ask you some questions based  
 19 upon what I read in the police report, okay?  
 20 On June 15, 2001, you were working  
 21 that day, correct?  
 22 A. Yes.  
 23 Q. And do you remember the time of your  
 24 shift?

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1 A. I worked the day shift.  
 2 Q. It began at eight a.m.?  
 3 A. Yes.  
 4 Q. And it ended at four p.m.?  
 5 A. It was supposed to, yes.  
 6 Q. I want to draw your attention to  
 7 approximately 12:40 on June 15. Do you recall  
 8 where you were at that time?  
 9 A. Yes.  
 10 Q. And where was that?  
 11 A. Dispatch center.  
 12 Q. What happened at that approximate  
 13 time, while you were at the dispatch center?  
 14 A. A motorist came in to report a car on  
 15 the side of the road with a gentleman who wasn't  
 16 feeling well -- looked like he wasn't feeling  
 17 well -- in it.  
 18 Q. And who else was there when that  
 19 report was made, other than you?  
 20 A. The dispatcher.  
 21 Q. Do you recall the dispatcher's name?  
 22 A. Diane.  
 23 Q. Do you recall the last name?  
 24 A. I can't think of her last name.

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1 Q. Does she still work at the Townsend  
 2 Police Department?  
 3 A. Yes, she's the head dispatcher.  
 4 Q. When this motorist came in and said  
 5 there was someone who didn't look well, was the  
 6 motorist talking to you in particular or talking  
 7 to the dispatcher or both of you?  
 8 A. Both of us.  
 9 Q. When this motorist said that what did  
 10 you think about that at that point in time, when  
 11 the motorist said there's somebody who doesn't  
 12 look well?  
 13 A. What did I -- I don't understand what  
 14 you mean.  
 15 Q. Did that cause any immediate thoughts,  
 16 when you heard that?  
 17 A. That I should go check on them.  
 18 Q. Okay. Any other thoughts?  
 19 A. Just go check on them, see what the  
 20 situation was.  
 21 Q. Did you think at that point in time  
 22 that that motorist was ill or sick?  
 23 A. I didn't know. I didn't see him. I  
 24 don't know what that other motorist considered

Page 20

1 not feeling well meant, or didn't look well.  
 2 Q. Did you ask the motorist any questions  
 3 after the motorist said there was a person who  
 4 didn't look well on the road?  
 5 A. Yes.  
 6 Q. And what questions were those?  
 7 A. What did he mean by that.  
 8 Q. Okay. And it was a male motorist who  
 9 came in?  
 10 A. Yes.  
 11 Q. When you say, "What do you mean by  
 12 that?" what was his response?  
 13 A. That as he drove by he saw someone  
 14 slumped over the wheel of the vehicle on the side  
 15 of the road.  
 16 Q. When he told you there was somebody  
 17 slumped over the wheel on the side of the road  
 18 did you think that that person was ill or sick?  
 19 A. It was one of my thoughts, yes.  
 20 Q. What were your other thoughts?  
 21 A. I tried to think of everything it  
 22 could have been. He could have been sick, he  
 23 could have been sleeping, he could have been just  
 24 picking something up and the motorist -- he could



Page 21

1 have been -- the motorist could have been  
2 completely wrong. He could have been just picking  
3 something up off the floor. It just went -- if  
4 this happens I was just trying to figure out what  
5 my plan was going to be.  
6 Q. At that point in time, when it was at  
7 least one of your thoughts that the motorist  
8 might have been sick or ill, did you contemplate  
9 calling for medical assistance?  
10 A. Yes.  
11 Q. And did you talk to anybody about  
12 that?  
13 A. Yes.  
14 Q. Who did you speak to?  
15 A. The dispatcher.  
16 Q. And what was that conversation?  
17 A. That I would go check, and if I need  
18 an ambulance I would let you know over the air.  
19 Not to start it.  
20 Q. You drove out there. Was it in a  
21 marked cruiser?  
22 A. Yes.  
23 Q. Were you in full uniform?  
24 A. Yes.

Page 22

1 Q. And did you pull your motor vehicle in  
2 back of the motor vehicle that was stopped?  
3 A. Yes.  
4 Q. And could you describe the area where  
5 this motor vehicle was stopped?  
6 A. Side of the road -- side of Route 13.  
7 It was on the outbound side.  
8 Q. Is there a breakdown lane there?  
9 A. No.  
10 Q. Route 13, how many lanes and --  
11 A. Two-lane highway. Runs north and  
12 south.  
13 Q. One lane in each direction?  
14 A. Yes.  
15 Q. He was in the southbound lane?  
16 A. Yes.  
17 Q. Was the vehicle off the roadway?  
18 A. Yes.  
19 Q. How it was parked, did you take any  
20 particular notice to how it was parked?  
21 A. It was just off the side of the road.  
22 Q. There was nothing indicative in how it  
23 was parked in relation to whether or not the  
24 person had been driving under the influence of

Page 23

1 alcohol.  
2 MR. TEHAN: Just by that factor?  
3 MR. GALLAGHER: Just by that factor.  
4 MR. TEHAN: All right. If you  
5 understand that, go ahead.  
6 A. I don't understand what you mean.  
7 Q. It wasn't parked crooked? It wasn't  
8 parked awry? It was --  
9 A. It was parked on the side of the road.  
10 I wouldn't say it was perpendicular to the road  
11 completely. It was off the side of the road as if  
12 somebody had just turned off to the side of the  
13 road.  
14 Q. I take it you approached the driver of  
15 the vehicle.  
16 A. Yes.  
17 Q. And at this point you were alone.  
18 A. Yes.  
19 Q. And as you approached the vehicle what  
20 observations did you make?  
21 A. That the motor vehicle was running,  
22 the windows were rolled up, the operator was  
23 sweating profusely, and he seemed a little  
24 confused.

Page 24

1 Q. These are observations you made. Where  
2 were you standing in relation to the driver of  
3 the vehicle?  
4 MR. TEHAN: At the point of making the  
5 observations she just described?  
6 MR. GALLAGHER: That's correct.  
7 MR. TEHAN: Go ahead.  
8 A. Walking up, I noticed that the vehicle  
9 was on -- walking up, I noticed that the windows  
10 were rolled up. When I got to the door jamb  
11 behind the driver I looked in. That's where I  
12 was standing.  
13 Q. Now, was the driver slumped over at  
14 that point in time?  
15 A. He was head-down. He wasn't slumped  
16 over the steering wheel, no.  
17 Q. His head was down against his chest?  
18 A. He was down, looking at his lap area.  
19 Q. At what point in time could you tell  
20 whether his eyes were open or closed?  
21 A. When I knocked on the window.  
22 Q. Was there a response by the driver  
23 when you knocked on the window?  
24 A. He turned his head and looked up.

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1 Q. At that point in time you could see  
 2 that he was sweating profusely.  
 3 A. Yes.  
 4 Q. And the window was still rolled up at  
 5 this time.  
 6 A. Yes.  
 7 Q. And with regard to his eyes, they  
 8 weren't red or bloodshot, were they?  
 9 A. They were glassy.  
 10 Q. That was something you didn't note in  
 11 your police report?  
 12 MR. TEHAN: I object to it. It speaks  
 13 for itself.  
 14 If you care to confirm that.  
 15 (Witness examining document.)  
 16 A. At that time, no, I didn't.  
 17 Q. When you see him as you've described  
 18 him, head down, looking into his lap, sweating  
 19 profusely, in connection with the other  
 20 information you had -- for example, the motorist  
 21 saying that there was a driver on the side of the  
 22 road who didn't look well -- at that point in  
 23 time did you think you had a person who was sick  
 24 or ill?

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1 A. It was one of my thoughts, yes.  
 2 Q. What were your other thoughts?  
 3 A. That perhaps he'd be under -- he was  
 4 under the influence.  
 5 Q. And you based that thought on what  
 6 facts or observations?  
 7 A. His confused state. Simple tasks.  
 8 Q. I would like to back up a second,  
 9 though.  
 10 While the window was still rolled up,  
 11 you can see that he's sweating at that point in  
 12 time, right?  
 13 A. Yes.  
 14 Q. And you had already seen that his head  
 15 was down, facing into his lap, correct?  
 16 A. Yes.  
 17 Q. Now, just at that point in time did  
 18 you have an opinion as to whether this person was  
 19 sick or ill?  
 20 MR. TEHAN: Excuse me. That's before  
 21 she knocked on the window, correct?  
 22 MR. GALLAGHER: That's correct.  
 23 MR. TEHAN: All right, go ahead.  
 24 A. It was one of my concerns, yes.

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1 Q. And at that point in time did you  
 2 think about calling and asking for medical  
 3 assistance?  
 4 A. No.  
 5 Q. And why is that?  
 6 A. I wanted to talk to him first.  
 7 Q. You knocked on the window.  
 8 A. (Nodding.)  
 9 Q. And he turned and faced you?  
 10 A. Yes.  
 11 Q. And was he pale?  
 12 A. Yes.  
 13 Q. As a police officer you had some  
 14 training in detecting whether a motorist or  
 15 driver had been or was operating under the  
 16 influence of alcohol.  
 17 A. Yes.  
 18 Q. And I take it that was done at the  
 19 academy.  
 20 A. Yes.  
 21 Q. And you had some subsequent training,  
 22 as well?  
 23 A. Yes.  
 24 Q. In that training was one of the

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1 indications that a person was under the influence  
 2 of intoxicating liquor that they would be  
 3 sweating profusely?  
 4 A. I don't recall that being a  
 5 prerequisite.  
 6 Q. Let me ask you, in regard to being  
 7 pale, in your training or instruction in  
 8 detecting a motorist who was under the influence  
 9 of intoxicating liquor, was that a factor in  
 10 looking at or determining whether or not somebody  
 11 was under the influence of alcohol?  
 12 A. Looking pale?  
 13 Q. Looking pale.  
 14 A. I don't recall that.  
 15 Q. You said you had some thought that the  
 16 person might have been sick or ill at the point  
 17 you're standing at the window, and you also said  
 18 that you had some other thoughts apart from that.  
 19 A. (Nodding.)  
 20 Q. Is that correct?  
 21 A. Yes.  
 22 Q. And those other thoughts were what?  
 23 A. Besides being ill?  
 24 Q. Right.

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1 A. Tired, confused, medical condition.  
2 Q. At that point in time, while you were  
3 at the window and the window was still rolled up,  
4 there was no factor at that point in time that  
5 would indicate to you that this person was under  
6 the influence of intoxicating liquor.  
7 A. At that point?  
8 Q. At that point.  
9 A. Correct.  
10 Q. After you knocked on the window and he  
11 looked at you, what happened then?  
12 A. I asked him to roll down the window.  
13 Q. And did he respond to that?  
14 A. No.  
15 Q. When you asked him to roll down the  
16 window I take it you said it in a loud enough  
17 voice so that he would hear you even though the  
18 window was rolled up.  
19 A. I would have to assume, yeah.  
20 Q. He didn't respond by rolling down the  
21 window. What did he do?  
22 A. He went back to his task, which was on  
23 his lap.  
24 Q. And that task would be what?

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1 A. Attempting to open a cigarette pack.  
2 Q. And what did you see with regard to  
3 that, what he was doing with his hands?  
4 A. He was trying to open the pack, and he  
5 couldn't get it open.  
6 Q. What did you do after that?  
7 A. Knocked on the window.  
8 Q. For a second time.  
9 A. (Nodding.)  
10 MR. TEHAN: You have to answer  
11 verbally.  
12 A. I'm sorry. Knocked on the window, yes.  
13 Q. And that was the second time.  
14 A. Yes.  
15 Q. What happened then with regard to him?  
16 A. He looked up and went back to his  
17 task. I believe it took me a couple of knocks for  
18 him to roll down the window.  
19 Q. Each time you're asking him to roll  
20 down the window.  
21 A. I -- yes.  
22 Q. And at some point he rolls down the  
23 window, true?  
24 A. Yes.

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1 Q. And then what happens between you and  
2 him?  
3 A. We had a conversation.  
4 Q. What do you say and what does he say?  
5 A. I ask him if he's all right.  
6 Q. And what did he respond to that?  
7 A. He didn't -- he looked confused. He  
8 just was staring at me.  
9 Q. Still sweating?  
10 A. Sweating.  
11 Q. Still pale?  
12 A. Still pale.  
13 Q. At that point in time, when he doesn't  
14 respond to your question, did you think he was  
15 ill or sick?  
16 A. Yes.  
17 Q. Did you speculate on what that illness  
18 or sickness might have been?  
19 MR. TEHAN: He's asking if you did so  
20 at that time.  
21 Q. At that time.  
22 A. At that time? Yes.  
23 Q. What were your thoughts on that?  
24 A. Maybe he was a diabetic.

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1 Q. After you had that thought that maybe  
2 he was a diabetic, did you call for medical  
3 assistance?  
4 A. At that point, no.  
5 Q. Did you have some training as a police  
6 officer with regard to the possibility that a  
7 motorist might be a diabetic, and how that would  
8 manifest itself?  
9 MR. TEHAN: I'll object to the form.  
10 I caution you that it would be  
11 training prior to that date.  
12 A. I don't understand.  
13 Q. At some point during your training  
14 prior to that date did you receive some training  
15 on how to differentiate between a person, a  
16 motorist, who might be a diabetic as opposed to a  
17 motorist who might be under the influence of  
18 intoxicating liquor?  
19 A. In first responder.  
20 Q. Okay. And --  
21 A. There were signs to look for.  
22 Q. What's first responder?  
23 A. It's -- first responder is like -- a  
24 first aid class. Because you're the first one to

<p style="text-align: right;">Page 33</p> <p>1 arrive at the scene prior to an ambulance.</p> <p>2 Q. Was that at the academy or after the</p> <p>3 academy?</p> <p>4 A. Both.</p> <p>5 Q. What were you taught in regard to</p> <p>6 making some distinction between whether a</p> <p>7 motorist is a diabetic or a motorist is under the</p> <p>8 influence of intoxicating liquor?</p> <p>9 A. The sweating of the person, the daze</p> <p>10 and confusion, and I -- there is an odor that</p> <p>11 emanates through that you can smell on the person</p> <p>12 who is having a diabetic reaction.</p> <p>13 Q. All right. So what you had seen of the</p> <p>14 driver, he had some signs that would be</p> <p>15 consistent with being a diabetic. Would that be</p> <p>16 true?</p> <p>17 A. Some of the signs, yes.</p> <p>18 Q. Some of the signs. And that would be</p> <p>19 sweating and that would be confusion.</p> <p>20 A. Yes.</p> <p>21 Q. What signs did he have that would be</p> <p>22 inconsistent with being a diabetic?</p> <p>23 A. What sign did he not show?</p> <p>24 MR. TEHAN: Well --</p>	<p style="text-align: right;">Page 35</p> <p>1 health-wise?</p> <p>2 A. I don't understand what you -- the</p> <p>3 whole medical --</p> <p>4 Q. Well, diabetics certainly can be</p> <p>5 people who look perfectly healthy, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And so when there's a diabetic who</p> <p>8 doesn't look perfectly healthy, where he's</p> <p>9 sweating and he's confused, you would agree with</p> <p>10 me the diabetic is having some sort of problem.</p> <p>11 A. Yes.</p> <p>12 Q. In your training did you learn what</p> <p>13 that problem might be? Did somebody tell you,</p> <p>14 "Well, this might be the problem the diabetic is</p> <p>15 having"?</p> <p>16 A. Their sugar levels.</p> <p>17 Q. Okay. Sugar levels being too low, too</p> <p>18 high?</p> <p>19 A. It would depend on the circumstance.</p> <p>20 Q. When he doesn't respond to your first</p> <p>21 inquiries as to whether or not he's okay or needs</p> <p>22 help, what happens at that point?</p> <p>23 A. The initial -- my initial contact with</p> <p>24 him?</p>
<p style="text-align: right;">Page 34</p> <p>1 MR. GALLAGHER: Let me withdraw that</p> <p>2 question.</p> <p>3 Q. I'll ask you another one.</p> <p>4 The driver of the vehicle was Timothy</p> <p>5 LaFrenier, correct?</p> <p>6 A. Yes.</p> <p>7 Q. What difficulty is a diabetic having</p> <p>8 when you see him and he's sweating profusely and</p> <p>9 he appears to be confused?</p> <p>10 MR. TEHAN: I'll object. I don't</p> <p>11 understand the question.</p> <p>12 If you do, you may answer.</p> <p>13 A. I don't. I'm sorry.</p> <p>14 MR. TEHAN: My question is what</p> <p>15 difficulty is he having. I don't know if you're</p> <p>16 seeking a medical opinion.</p> <p>17 Q. Just in your emergency training, you</p> <p>18 received some training with regard to whether or</p> <p>19 not the driver might be a diabetic as opposed to</p> <p>20 somebody who is under the influence of</p> <p>21 intoxicating liquor, right?</p> <p>22 A. Yes.</p> <p>23 Q. And during that training did they tell</p> <p>24 you what problem a diabetic might be having</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Right.</p> <p>2 A. I asked him if he was all right. He</p> <p>3 looked up to me -- looked up at me and went back</p> <p>4 to his task. And I asked him a couple more times</p> <p>5 before I could get an answer from him.</p> <p>6 Q. And what was the answer?</p> <p>7 A. That he was fine. I asked him if he</p> <p>8 was all right and he said he was.</p> <p>9 Q. You had no difficulty understanding</p> <p>10 his speech at that point?</p> <p>11 A. It was slower than -- it was slow.</p> <p>12 Q. He said he was fine. Then what did you</p> <p>13 do?</p> <p>14 A. I asked him if he was sure, did he</p> <p>15 need medical attention, was he all right. And he</p> <p>16 told me that he was fine.</p> <p>17 Q. Was it your opinion that he was fine?</p> <p>18 A. No.</p> <p>19 Q. If he said that he wanted medical</p> <p>20 attention what would you have done?</p> <p>21 A. Called the ambulance.</p> <p>22 Q. So he says he's fine. What happens</p> <p>23 after that?</p> <p>24 A. I asked for backup.</p>



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1 Q. And what was your reason for asking  
 2 for backup?  
 3 A. Because I didn't want him to leave  
 4 under these conditions.  
 5 Q. Was the engine still running?  
 6 A. Yes.  
 7 Q. At any point in time did you ask him  
 8 to shut the engine off?  
 9 A. Yes, I did.  
 10 Q. How did he respond to that?  
 11 A. It was off, was his statement.  
 12 Q. When he told you it was off what did  
 13 you do?  
 14 A. I explained to him that it was still  
 15 running.  
 16 Q. And how did he respond to that?  
 17 A. He told me it was off.  
 18 Q. When he tells you twice that it was  
 19 off what thoughts did you have in regard to those  
 20 comments with respect to him?  
 21 MR. TEHAN: I'll object. You'll forgive  
 22 me, but that is encompassing everything that had  
 23 occurred prior, as well, correct?  
 24 MR. GALLAGHER: Yes.

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1 MR. TEHAN: Thank you.  
 2 A. Can you ask --  
 3 MR. TEHAN: Now we've cleared it up,  
 4 he'll ask you another one.  
 5 Q. When he says for the second time that  
 6 it is off, the car is off, now taking everything  
 7 that had happened prior to that, that you had  
 8 observed, what thoughts did you have with regard  
 9 to Mr. LaFrenier?  
 10 A. That something was going on with Mr.  
 11 LaFrenier.  
 12 Q. And what thought did you have as to  
 13 what was going on with him?  
 14 A. That he was either having a medical  
 15 condition or he was under the influence of  
 16 something.  
 17 Q. When you say "something" you're  
 18 referring to what?  
 19 A. At the time I thought it was alcohol.  
 20 Q. After he says that the engine is off  
 21 the second time, what happens?  
 22 A. I -- he said he had to leave.  
 23 Q. How did you respond to that?  
 24 A. I told him he wasn't going anywhere.

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1 Q. How did he respond to that?  
 2 A. He asked me if I had -- what -- some  
 3 type of problem.  
 4 Q. How did you respond to that?  
 5 A. I told him that I was trying to figure  
 6 out if he was feeling well, if he needed my help.  
 7 Q. Did he respond to that?  
 8 A. Said he had to get going, and was  
 9 trying to leave the scene.  
 10 Q. How was he trying to leave the scene?  
 11 A. He turned -- we were having a  
 12 conversation. He turned as if he was going to  
 13 take -- drive away, because the car was still  
 14 running.  
 15 Q. What did you do at that point?  
 16 A. I asked him to shut the vehicle off,  
 17 again.  
 18 Q. And what did he do, if anything?  
 19 A. He turned to me and just went back --  
 20 like he was going to -- he turned back towards --  
 21 facing the front of the car.  
 22 Q. What happened next?  
 23 A. Opened the door and asked him to step  
 24 from the car.

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1 Q. Was the vehicle still running?  
 2 A. Yes.  
 3 Q. When you opened the door and asked him  
 4 to step from the car what indications did you  
 5 have, if any, that Mr. LaFrenier was under the  
 6 influence of an intoxicating liquor?  
 7 A. He was not steady on his feet.  
 8 Q. Let me just back up a little bit.  
 9 When you opened the door he's still  
 10 sitting in the vehicle, correct?  
 11 A. Yes, sir.  
 12 Q. So when you opened the door and asked  
 13 him to step from the vehicle what indications did  
 14 you have that he was under the influence of an  
 15 intoxicating liquor?  
 16 A. Just his dazed, confused state, some  
 17 inability to get out of the car, and light on his  
 18 feet.  
 19 Q. All right. But light on his feet and  
 20 inability to get out of the car, those wouldn't  
 21 be a factor while he's still sitting in the car,  
 22 correct?  
 23 A. Correct.  
 24 Q. And when you opened the door and asked

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1 him to get out of the car, obviously he was still  
 2 sitting in the car.  
 3 A. Yes.  
 4 Q. After you asked him to get out of the  
 5 car did he get out of the car?  
 6 A. Not at first.  
 7 Q. What did he do?  
 8 A. Hesitated. Asked me if there was a  
 9 problem, again.  
 10 Q. Yes?  
 11 A. And, again, he had to get going.  
 12 Q. Then what did you do?  
 13 A. I placed my arm on him and asked him  
 14 to step from the vehicle so I could determine if  
 15 he was all set before he drove off.  
 16 Q. I apologize, but is the engine off at  
 17 this point in time?  
 18 A. No.  
 19 Q. So what arm do you use to grasp his  
 20 arm?  
 21 A. I believe it to be my right.  
 22 Q. Do you recall where you put your hand  
 23 on his body?  
 24 A. (Indicating.)

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1 MR. TEHAN: You have to say verbally.  
 2 A. Left upper arm.  
 3 Q. How did Mr. LaFrenier respond to that?  
 4 A. He again asked me if there was a  
 5 problem.  
 6 Q. How did you respond to him?  
 7 A. I told him I wanted to check and see  
 8 if he was okay, and see what his confusion was  
 9 about.  
 10 Q. At some point was the engine shut off?  
 11 A. Yes.  
 12 Q. Who did that?  
 13 A. I did.  
 14 Q. Where was Mr. LaFrenier when you shut  
 15 the engine off?  
 16 A. Leaning against the car.  
 17 Q. At some point he gets out of the car.  
 18 A. Yes.  
 19 Q. Do you assist him in getting out of  
 20 the car?  
 21 A. Yes.  
 22 Q. How do you do that?  
 23 A. As I say, I placed my hand on his arm.  
 24 THE WITNESS: Can we break?

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1 MR. TEHAN: Yes, we could.  
 2 (Short recess.)  
 3 MR. TEHAN: For the record, I believe  
 4 the witness would supplement a prior answer.  
 5 Would you go ahead?  
 6 A. The dispatcher's last name, Diane  
 7 Babineau.  
 8 Q. Thank you.  
 9 When Mr. LaFrenier exited his vehicle  
 10 he stood up and fell towards the motor vehicle,  
 11 is that correct?  
 12 A. Yes.  
 13 Q. When he did that were you holding onto  
 14 him?  
 15 A. No.  
 16 Q. So at some point when he got out of  
 17 the vehicle you released your hand from his arm.  
 18 A. As he started to get out of the  
 19 vehicle he did the rest on his own. Got out. He  
 20 didn't need my help.  
 21 Q. When he fell towards the vehicle,  
 22 could you describe what you saw when he did that?  
 23 A. He was facing the rear of the vehicle,  
 24 and he fell towards the left-hand side -- his

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1 left side, which would be the driver's side of  
 2 the car.  
 3 Q. And did he hit the car?  
 4 A. He -- and the car stopped his fall.  
 5 Q. What did you do at that point?  
 6 A. Reached for him. Grabbed his elbow.  
 7 Q. Did he say anything to you at that  
 8 time?  
 9 A. He just kept asking me why he was  
 10 being stopped and what the problem was.  
 11 Q. Did you respond to that?  
 12 A. I kept -- the conversation kept going  
 13 between us both having the same questions and the  
 14 same response. "Just want to make sure you're  
 15 okay."  
 16 Q. When he fell against the car or, as  
 17 you stated, the car stopped his fall, after that,  
 18 immediately after that, did you call for medical  
 19 assistance for Mr. LaFrenier?  
 20 A. No, I asked him, and he said, "No,  
 21 thank you." Well, he said, "No."  
 22 Q. How was he walking when he got out of  
 23 the car?  
 24 A. Unstable on his feet. Staggering.

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1 Q. After he fell against the car, did you  
 2 then assist him physically?  
 3 A. Yes. I held his elbow.  
 4 Q. Did you direct him to a certain spot?  
 5 A. Yes.  
 6 Q. Returning back to the time when Mr.  
 7 LaFrenier first rolled down his window and you're  
 8 at the side of the car, you didn't smell any odor  
 9 of alcohol at that point?  
 10 A. I did not.  
 11 Q. And you didn't see any alcohol  
 12 containers in the car?  
 13 A. No, I did not.  
 14 Q. And at no point when Mr. LaFrenier was  
 15 walking from the car did you smell an odor of  
 16 alcohol.  
 17 A. No, I did not.  
 18 Q. And you requested him to lean against  
 19 the trunk lid of his motor vehicle.  
 20 A. Yes.  
 21 Q. And did you do that because you  
 22 thought if he wasn't leaning against it he'd fall  
 23 down?  
 24 A. Yes.

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1 Q. And at some point you asked for  
 2 assistance from another officer?  
 3 A. Yes.  
 4 Q. Could you put that in context of what  
 5 was happening at that time, when you asked for  
 6 assistance?  
 7 A. At what point did I ask for  
 8 assistance?  
 9 Q. Yes.  
 10 A. At -- before Mr. LaFrenier got out of  
 11 the vehicle I asked for backup.  
 12 Q. And were you told you were going to  
 13 get backup?  
 14 A. Yes.  
 15 Q. Were you told who your backup was  
 16 going to be?  
 17 A. My backup responded over the air  
 18 direct.  
 19 Q. Did you assist Mr. LaFrenier in  
 20 leaning him against the trunk lid of his car?  
 21 A. Yes.  
 22 Q. How did you do that?  
 23 A. I held his arm.  
 24 Q. What did he do?

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1 A. He -- at first he almost missed the  
 2 trunk, so I grabbed him and guided him to the  
 3 trunk.  
 4 Q. Which side of the vehicle is he  
 5 closest to when he almost misses the trunk?  
 6 A. If you were to split the trunk up, you  
 7 mean? Because we're in the rear.  
 8 Q. You're in the rear. So it wasn't to  
 9 the left side of the vehicle and it wasn't to the  
 10 right side of the vehicle.  
 11 A. It was more towards the passenger  
 12 side, the right side.  
 13 Q. Okay. And when you say he almost  
 14 missed it, then that means he would have fallen  
 15 somewhere in front of the trunk.  
 16 A. He was -- the way he was positioned --  
 17 Q. Right.  
 18 A. -- if he would have kept going he  
 19 would have -- if you're facing the vehicle, he  
 20 would have fallen on the ground on the passenger  
 21 side.  
 22 Q. Face first?  
 23 A. Back side first.  
 24 Q. Were you able to actually get him to

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1 lean against --  
 2 A. Yes.  
 3 Q. How did you do that?  
 4 A. When he was falling I grabbed his arm  
 5 and guided him to the back of the trunk.  
 6 Q. Then what happened next?  
 7 A. He wanted to go home. He stated he  
 8 wanted to go home. He stated he had to get going.  
 9 I asked him some more questions.  
 10 Q. What were those questions?  
 11 A. I asked him if he was feeling well. I  
 12 asked him if he was -- felt sick. I asked him if  
 13 he had been drinking that day. I asked him if he  
 14 was on any medication. I asked him if he had a  
 15 medical condition.  
 16 Q. And what were his responses to those  
 17 questions?  
 18 A. He had to get going. He doesn't  
 19 understand why he was being stopped. He had to  
 20 get -- at some point he had to go home and at  
 21 another point he had to go to work.  
 22 Q. Did you ask him where his home was?  
 23 A. Yes.  
 24 Q. What did he respond to that?



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1 A. He told me Fitchburg.  
2 Q. Did you ask him where his work was?  
3 A. Yes, he did.  
4 Q. What did he tell you?  
5 A. Nashua.  
6 Q. Did you ask him if he knew where he  
7 was at that point in time?  
8 A. Yes, I did.  
9 Q. And what was his response to that?  
10 A. He stated he was in Nashua.  
11 Q. And that's Nashua, New Hampshire.  
12 A. Yes.  
13 Q. Did you respond to him when he said he  
14 was in Nashua, New Hampshire?  
15 A. I explained -- I asked him again, and  
16 he told me he was in the parking lot of his  
17 business in Nashua, New Hampshire. I asked him if  
18 he realized that he was in Townsend,  
19 Massachusetts.  
20 Q. What did he respond to that?  
21 A. He asked -- he said he wasn't. He  
22 asked me if I was sure.  
23 Q. And you said you were sure.  
24 A. I was pretty sure.

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1 Q. When Mr. LaFrenier was at the back of  
2 the vehicle, at that point in time is Officer  
3 Morrison there yet?  
4 A. Not yet.  
5 Q. So after you got Mr. LaFrenier to lean  
6 up against the vehicle, what happened next?  
7 A. We had conversation.  
8 Q. That conversation that you just spoke  
9 about?  
10 A. We just talked about.  
11 Q. When he was leaning up against the  
12 vehicle was he leaning back-wise or front-wise?  
13 Is his fanny on the back of the vehicle?  
14 A. His rear, posterior, is on the back of  
15 his car.  
16 Q. How about his hands? Do you recall  
17 where his hands were at that point?  
18 A. He talked with them.  
19 Q. What was happening between you and Mr.  
20 LaFrenier when Officer Morrison arrived on the  
21 scene?  
22 A. We were wrestling.  
23 Q. To back up a little bit, after you  
24 told Mr. LaFrenier that he's in Townsend, not

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1 Nashua, what happened next?  
2 A. Again, he asked me if I was sure.  
3 Explained to him I was. I asked him some more  
4 medical questions. Then he told me he had to get  
5 going.  
6 Q. Then what happened?  
7 A. He tried to get by me and get into his  
8 car and go.  
9 Q. Was he able to walk?  
10 A. He was unsteady on his feet.  
11 Q. Did you have to hold him up?  
12 A. To walk to his car?  
13 Q. Mm-hmm.  
14 A. I don't understand.  
15 Q. He's walking towards his car and he's  
16 unsteady. He's walking towards the driver's seat.  
17 A. He turned toward the driver's seat, to  
18 go, and I was right there. It wasn't a long walk.  
19 Q. Did you assist him in his walk towards  
20 the driver's seat?  
21 A. No.  
22 Q. What did you do?  
23 A. I told him he wasn't going anywhere,  
24 he had to stay there. He then pushed me out of

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1 his way.  
2 Q. Let me ask you this: How close were  
3 the two of you when Mr. LaFrenier attempted to  
4 push you out of his way?  
5 A. Under a foot. We were in close  
6 contact.  
7 Q. At that point in time had he said  
8 anything to you that indicated to you that he  
9 knew that you were a police officer?  
10 A. Yes.  
11 Q. What did he say to you?  
12 A. He wanted to know the reason for the  
13 stop, why he was being stopped.  
14 Q. With regard to the push that you just  
15 testified about, if you had stepped back would  
16 Mr. LaFrenier have fallen on his face?  
17 MR. TEHAN: I'll object as potentially  
18 speculative.  
19 If you can answer it, go ahead.  
20 A. I don't understand. Is it my belief  
21 that if I was not standing there, do I think he  
22 would have fallen?  
23 Q. Yes.  
24 A. Yes.



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1 Q. What part of his body struck your  
 2 body?  
 3 A. His hand.  
 4 Q. And where on your body?  
 5 A. He pushed my arm and my side.  
 6 Q. Do you recall which arm?  
 7 A. Which arm did he strike?  
 8 Q. Correct.  
 9 A. My left.  
 10 Q. And do you recall which side of your  
 11 body?  
 12 A. Left, because of the way I was  
 13 standing.  
 14 Q. What happened after that?  
 15 A. I took hold of Mr. LaFrenier.  
 16 Q. And where on his body?  
 17 A. His arms.  
 18 Q. Both of your hands grasping both of  
 19 his arms?  
 20 A. Yes.  
 21 Q. What was your purpose in doing that?  
 22 A. Preventing him from leaving.  
 23 Q. After you had grasped his arms, what  
 24 happened next?

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1 A. He started to push -- we started to  
 2 push. I decided at that point to place him under  
 3 -- to place him in handcuffs.  
 4 Q. When you say "we started to push" at  
 5 any point in time did his arms break free of your  
 6 grasp?  
 7 A. Yes.  
 8 Q. Can you describe how that happened?  
 9 A. He was slippery, so when I was  
 10 grabbing him my hands would slip, and --.  
 11 Q. Was he slippery because of sweat?  
 12 A. Yes.  
 13 Q. And your decision to put handcuffs on  
 14 him was in order to help you make sure he didn't  
 15 leave.  
 16 A. Part of it, yes.  
 17 Q. And what would be the other part?  
 18 A. I was placing him under arrest.  
 19 Q. And you were placing him under arrest  
 20 at that point in time for what?  
 21 A. At that time, A&B on a P.O.,  
 22 resisting, and suspicion of OUI.  
 23 Q. Could you explain what you mean by  
 24 suspicion of OUI?

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1 A. His behavior led me to believe that he  
 2 was under the influence of something, but he was  
 3 unable to provide me with field sobrieties on the  
 4 side of the road.  
 5 Q. When you say suspicion of OUI, that's  
 6 suspicion of operating under an intoxicating  
 7 liquor.  
 8 A. Some type of -- some type of  
 9 influence. I didn't know if it was alcohol or  
 10 drugs.  
 11 Q. Do you recall when you wrote your  
 12 police report in connection with this arrest?  
 13 MR. TEHAN: You can refresh your  
 14 memory.  
 15 (Witness examining document.)  
 16 A. Okay. Yes.  
 17 Q. When, time-wise, when did you write  
 18 this report?  
 19 A. When I returned to the station.  
 20 Q. Your handcuffs, are those handcuffs  
 21 that would be used in making an arrest regardless  
 22 of the size of the person?  
 23 A. Yes.  
 24 Q. So does that mean they're adjustable,

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1 given the size of a person's wrists?  
 2 A. Yes.  
 3 Q. Describe how you went about trying to  
 4 put the handcuffs on Mr. LaFrenier.  
 5 A. Turned him to the car, stomach  
 6 forward, and took one of his hands -- one of his  
 7 arms, and brought it behind him, and put the  
 8 handcuffs on.  
 9 Q. When you put the handcuffs on him did  
 10 you think that they were put on in an appropriate  
 11 manner, given the size of his wrists?  
 12 A. Do I think they were put on in an  
 13 appropriate manner?  
 14 MR. GALLAGHER: Let me withdraw that.  
 15 Q. Did you put the handcuffs on too  
 16 tightly, given the size of his wrists?  
 17 A. I don't believe I did.  
 18 Q. Once the handcuffs were on him what  
 19 happens next?  
 20 MR. TEHAN: I'll object, just as a  
 21 matter of foundation. She only spoke to cuffing  
 22 one hand at that point.  
 23 MR. GALLAGHER: I apologize.  
 24 MR. TEHAN: You may have jumped ahead a

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1 little bit, but it's your depo.  
 2 Q. You were only able to get one handcuff  
 3 on him?  
 4 A. Yes.  
 5 Q. Did you just testify that you put both  
 6 handcuffs on him?  
 7 A. No, I said one.  
 8 Q. After you got the one handcuff on him  
 9 what happened?  
 10 A. Ones I got the one handcuff on his one  
 11 arm he decided to get up, and he was going to  
 12 leave.  
 13 Q. What was his position when he had the  
 14 one handcuff on him?  
 15 A. Up against the trunk of the car.  
 16 Q. Was his torso bent over?  
 17 A. At one point, yes.  
 18 Q. And was that something he did on his  
 19 own or was that something you did?  
 20 A. I placed him on the trunk that way.  
 21 Q. Was his chest touching the trunk?  
 22 A. At one point.  
 23 Q. Was his face touching the trunk?  
 24 A. Yes.

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1 Q. After you get the one handcuff on him  
 2 he wants to leave.  
 3 A. Yes.  
 4 Q. And what does he do?  
 5 A. He stands up straight, taking his  
 6 chest and face off the trunk of the car.  
 7 Q. As he's standing up straight did you  
 8 do something to him?  
 9 A. I push him back down.  
 10 Q. You do that with one hand or two  
 11 hands?  
 12 A. One hand.  
 13 Q. What is your other hand doing?  
 14 A. Holding the open cuff.  
 15 Q. When you push him back down does he go  
 16 back down?  
 17 A. Yes, and then back up.  
 18 Q. When he's going back up what do you  
 19 do?  
 20 A. Push him back down.  
 21 Q. Then what does he do?  
 22 A. He gets back up and he tries to get  
 23 his arm free and swings towards me.  
 24 Q. He tries to get the arm that's cuffed

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1 free?  
 2 A. Yes.  
 3 Q. At this point is he facing away from  
 4 you?  
 5 A. No.  
 6 Q. And how is it that he was able to turn  
 7 around and face you?  
 8 A. When I pushed him down, while we were  
 9 struggling for him to stay down, and holding the  
 10 cuff, he squirmed and turned, facing me.  
 11 Q. What hand is the cuff on?  
 12 A. Left.  
 13 Q. When he turns to face you did you let  
 14 go of the hand that you had on the cuff?  
 15 A. Eventually.  
 16 Q. So he turns and faces you, and then  
 17 what happens?  
 18 A. I tried to get him back under control,  
 19 back onto the -- onto the trunk of the car.  
 20 Q. And how do you do that?  
 21 A. I try to grab his wrist, try to grab  
 22 the top of his shoulders and push him back down.  
 23 Q. And what happened at that point?  
 24 A. He starts hitting me.

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1 Q. Before he starts to hit you are both  
 2 hands of his free of your grasp?  
 3 A. When he starts hitting me?  
 4 Q. Yes.  
 5 A. Yes.  
 6 Q. Which arms or hands does he hit you  
 7 with?  
 8 A. His left hand -- no, strike that. His  
 9 right hand. The free hand. Free from the cuff.  
 10 Q. All right. And where does his hand  
 11 strike your body?  
 12 A. In the stomach area.  
 13 Q. And closed fist?  
 14 A. Closed fist.  
 15 Q. How do you respond to that?  
 16 A. I push him away, push him back towards  
 17 the car.  
 18 Q. And you were successful in  
 19 accomplishing that?  
 20 A. A couple of times.  
 21 Q. And after you push him away, after he  
 22 struck you in the stomach, what happens then?  
 23 A. Put my hands back on him the way I had  
 24 them before. He tries to get up, and I strike him

1 again.  
 2 Q. Where do you strike him?  
 3 A. In -- I don't know what this is  
 4 called. The calf? The thigh area?  
 5 Q. Somewhere in the leg?  
 6 A. Yes, with my knee.  
 7 Q. Had you been trained to do that?  
 8 A. Yes.  
 9 Q. When you strike him somewhere in the  
 10 leg with your knee what happens to him?  
 11 A. He stops for seconds. Then he starts  
 12 up again.  
 13 Q. When he stopped what do you do?  
 14 A. Try to finish cuffing him.  
 15 Q. And did you try to turn him away from  
 16 you?  
 17 A. Yes.  
 18 Q. Were you successful in that?  
 19 A. Couple of times.  
 20 Q. Did you strike him again in the leg?  
 21 A. Couple of times.  
 22 Q. Same leg?  
 23 A. Yes.  
 24 Q. What happens next?

1 A. He gets up from the vehicle, tries to  
 2 strike me again. We end up falling on the ground.  
 3 Q. Both of you fell on the ground?  
 4 A. Yeah.  
 5 Q. What's in the immediate vicinity of  
 6 where his car was parked? Is it residential? Is  
 7 it business?  
 8 A. It's residential. There's a house a  
 9 couple of yards away.  
 10 Q. Just one house?  
 11 A. And there's a house across -- there's  
 12 a couple of houses across the street, and then  
 13 there's a police station.  
 14 Q. Do you know whether or not there was  
 15 anybody witnessing what's happening between you  
 16 and Mr. LaFrenier in the back of the vehicle?  
 17 A. The traffic is flowing.  
 18 Q. Did anybody stop?  
 19 A. No.  
 20 Q. Did anybody tell you that they had  
 21 witnessed what was going on?  
 22 A. No one came forward.  
 23 Q. Were you able to eventually get the  
 24 cuffs on him?

1 A. By myself?  
 2 Q. Yes.  
 3 A. No.  
 4 Q. So you were both on the ground.  
 5 A. (Nodding.)  
 6 Q. From that point forward what happens  
 7 next?  
 8 A. We wrestled a bit. Blows were  
 9 exchanged. And my backup arrived.  
 10 Q. When you say blows were exchanged,  
 11 explain what Mr. LaFrenier did and what you did?  
 12 A. Mr. LaFrenier was trying to punch at  
 13 me with both hands. One was more of a punch  
 14 towards the stomach area and others were just  
 15 flailing of his arm with the cuff on it. And I  
 16 was trying to restrain him, trying to grab the  
 17 cuff, the free cuff, and trying to get some knee  
 18 blows into his leg area.  
 19 Q. Were you successful in getting those  
 20 knee blows in?  
 21 A. A couple.  
 22 Q. As a result of this confrontation with  
 23 Mr. LaFrenier did you go to the hospital?  
 24 A. Yes.

1 Q. For yourself?  
 2 A. No.  
 3 Q. Did you receive medical care at a  
 4 doctor's office?  
 5 A. No.  
 6 Q. Did you receive any injuries?  
 7 A. No.  
 8 Q. Did you receive any bruises?  
 9 A. No.  
 10 Q. Did you receive any scraps?  
 11 A. No.  
 12 Q. When Officer Morrison arrived, what  
 13 happened at that point in time?  
 14 A. From my perspective? We were still on  
 15 the ground wrestling, and then when Dan came in  
 16 he got him up on his feet and off me, and we  
 17 continued to cuff.  
 18 Q. When he got him up off his feet what  
 19 did Officer Morrison do with Mr. LaFrenier?  
 20 A. Placed him against --  
 21 MR. TEHAN: Excuse me. I'll object. I  
 22 may not have heard you correctly, but I thought  
 23 you said when he got him off his feet. Perhaps I  
 24 didn't --

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1 MR. GALLAGHER: I didn't mean -- let me  
2 rephrase it.  
3 MR. TEHAN: Thank you.  
4 Q. What did Officer Morrison do with Mr.  
5 LaFrenier that you witnessed after Officer  
6 Morrison first arrived at the scene?  
7 A. He took hold of Mr. LaFrenier and  
8 picked him up and placed him on the side of the  
9 car.  
10 Q. The side of the car?  
11 A. I believe it was the front of the car.  
12 Q. Did you watch Officer Morrison and Mr.  
13 LaFrenier go into the front of the car?  
14 A. I was right there. I was with them.  
15 Q. Where was Officer Morrison holding Mr.  
16 LaFrenier as they're going to the front of the  
17 car?  
18 A. I don't understand what you mean.  
19 Where was he --  
20 Q. Did he have his hands on Mr. LaFrenier  
21 as he was going to the front of the car?  
22 A. Yes.  
23 Q. Did he have both hands on him?  
24 A. I believe he did, yes.

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1 Q. Where were Mr. LaFrenier's arms when  
2 Officer Morrison had both hands on Mr. LaFrenier?  
3 A. I believe they were in his -- towards  
4 his back area.  
5 Q. And what happened after Officer  
6 Morrison got Mr. LaFrenier to the front of the  
7 car?  
8 A. I continued to -- he put his arms  
9 behind him and I cuffed him. I finished the  
10 cuffing procedure.  
11 Q. Was Mr. LaFrenier's body placed on the  
12 car, touching the car?  
13 A. Yes.  
14 Q. And would his chest be over the front  
15 of the car?  
16 A. Yes.  
17 Q. And would his face be over the front  
18 of the car?  
19 A. Yes.  
20 Q. Would his chest be touching the car?  
21 A. I believe it was, yes.  
22 Q. Would his face be touching the car?  
23 A. Yeah.  
24 Q. After the handcuffs were placed on Mr.

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1 LaFrenier, what happened next?  
2 A. He took him and put him in the rear of  
3 the cruiser.  
4 Q. And once he was in the rear of the  
5 cruiser what happens?  
6 A. I just transported him back to the  
7 station.  
8 Q. Does Officer Morrison also go back to  
9 the station?  
10 A. Yes.  
11 Q. And who is back at the station when  
12 you arrive back at the station with Mr.  
13 LaFrenier?  
14 A. At that time?  
15 Q. Yes.  
16 A. The dispatcher's in dispatch. I arrive  
17 with Mr. LaFrenier. Officer Morrison is right  
18 behind me in his cruiser.  
19 Q. There was no police officer back at  
20 the station?  
21 A. Not at that time.  
22 Q. At that point in time?  
23 A. No.  
24 Q. At a later point in time was there a

Page 68

1 police officer there when you were there and Mr.  
2 LaFrenier was there?  
3 A. Yes.  
4 Q. And who was that police officer?  
5 A. There was Officer Johnson and Officer  
6 Gomes.  
7 Q. Would there be a supervisor among the  
8 various officers back at the station?  
9 A. Senior officer would be in charge.  
10 Q. And who would that be?  
11 A. Officer Johnson.  
12 Q. Do you know how it is that Officer  
13 Johnson came to the station?  
14 A. I don't know.  
15 Q. Do you know whether or not anyone  
16 called him, asking him to come to the station?  
17 A. I don't honestly know.  
18 Q. Once back at the station was Mr.  
19 LaFrenier afforded a breathalyzer test?  
20 A. Yes.  
21 Q. When you take Mr. LaFrenier back to  
22 the station you take him to a particular place  
23 within the station?  
24 A. Yes.



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1 Q. And where would that be?

2 A. The booking area.

3 Q. Was he asked to respond to booking

4 questions?

5 A. Yes.

6 Q. Did you ask him to respond to booking

7 questions?

8 A. I asked some questions. Officer

9 Johnson asked some questions, also.

10 Q. What questions did you ask?

11 A. Asked him about his medical condition.

12 Asked him if there was somebody we could call.

13 Q. Did he understand you at that point in

14 time?

15 MR. TEHAN: I'll object.

16 You can say whether he appeared to.

17 I think it's speculative.

18 A. He seemed more understanding than he

19 had in the past.

20 Q. Let me ask you this: Did he respond to

21 your questions verbally?

22 A. Yes.

23 Q. Do you recall what he said?

24 A. Each question was different, so --.

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1 Q. Did his responses to you make sense in

2 relation to the question that was being asked of

3 him?

4 A. At that time, yes.

5 Q. Do you recall what Officer Johnson

6 asked him?

7 A. I believe Officer Johnson asked him

8 about the breathalyzer and any medical condition

9 he might have, and if he was on medication.

10 Q. Were you present when those questions

11 and perhaps responses were made?

12 A. Yes.

13 Q. And do you recall what Mr. LaFrenier

14 said to Officer Johnson?

15 A. He stated that he hadn't been

16 drinking. He stated that he didn't have a medical

17 condition. And he wasn't on any medication.

18 Q. Is the breathalyzer in a separate

19 room?

20 A. Yes.

21 Q. After those various questions were

22 asked of Mr. LaFrenier, was he then taken to that

23 room for the breathalyzer?

24 A. Yes.

Page 71

1 Q. Who took him to the room for the

2 breathalyzer? Or who accompanied him?

3 A. We all did.

4 Q. And how many officers would that be?

5 A. Officer Morrison was in the room to

6 give the breathalyzer. Officer Johnson and myself

7 escorted him into the room.

8 Q. So the three officers were there. What

9 about Mr. Gomes?

10 A. He was more or less in training, so he

11 was watching.

12 Q. Were there any other officers on duty

13 at that point in time?

14 A. That was it.

15 Q. Do you recall whether or not any

16 officer at the station in the room where the

17 breathalyzer was, after Mr. LaFrenier was taken

18 there, demanded that he take a breathalyzer test?

19 A. No.

20 Q. What was told to him by whom with

21 regard to the breathalyzer?

22 A. Officer Johnson explained the

23 procedure to him.

24 Q. Did any officer, while Mr. LaFrenier

Page 72

1 is in the breathalyzer room, ask him whether or

2 not any officer used excessive force on him?

3 A. I don't understand. Can you --

4 Q. Did Officer Johnson ask Mr. LaFrenier

5 whether or not any officer used excessive force

6 on him in making the arrest?

7 A. I don't recall him saying anything

8 like that.

9 Q. Did Mr. LaFrenier have to sign

10 anything with regard to the breathalyzer test?

11 A. At that point? No.

12 Q. Did he take the test?

13 A. Yes.

14 Q. And it was a zero zero?

15 A. Yes.

16 Q. Was there any reaction among the

17 officers in the room to the fact that it was a

18 zero zero?

19 A. I don't understand what you mean by

20 "reaction".

21 Q. Did anybody say anything to anybody

22 else concerning the fact that the test result was

23 a zero zero?

24 A. We then -- Officer Johnson and I had a

Page 73

1 conversation about him maybe having a medical  
 2 condition, and then we tried to talk to him about  
 3 it.  
 4 Q. At any point in time did any medical  
 5 personnel arrive at the scene on the roadway?  
 6 A. On the road?  
 7 Q. Yes.  
 8 A. No.  
 9 Q. What was the conversation between you  
 10 and Officer Johnson with regard to whether or not  
 11 he had a medical problem?  
 12 A. Mr. LaFrenier was involved in the  
 13 conversation.  
 14 Q. Okay. You recall the conversation?  
 15 A. Some of it, yeah.  
 16 Q. Can you tell us what you recall?  
 17 A. It was explained to him he blew a  
 18 point 00, which means he wasn't intoxicated, but  
 19 he had something going on, maybe we should call  
 20 the ambulance, did he wish to seek medical  
 21 attention.  
 22 Q. Okay. How did he respond to that?  
 23 A. At first he didn't think he needed the  
 24 medical attention, suggested that we talk to his

Page 74

1 wife, and eventually wanted the ambulance.  
 2 Q. And the ambulance arrived and took him  
 3 to a hospital.  
 4 A. Yes.  
 5 Q. Which hospital was that?  
 6 A. Leominster.  
 7 Q. Which officers went to the hospital?  
 8 A. I did.  
 9 Q. Any other officers?  
 10 A. No.  
 11 Q. What was your purpose in going to the  
 12 hospital?  
 13 A. Mr. LaFrenier was still under arrest.  
 14 Q. Did you talk to any medical personnel  
 15 at the hospital?  
 16 A. I spoke briefly to his doctor. Or the  
 17 ER doctor.  
 18 Q. And what was that conversation?  
 19 A. To ascertain if he was going to be  
 20 released or admitted, what kind of tests were  
 21 being done.  
 22 Q. Was any request by you made that blood  
 23 be drawn from Mr. LaFrenier and tested?  
 24 A. No.

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1 Q. Do you know whether or not that was  
 2 done?  
 3 A. I have no idea. Whatever they did --  
 4 they did close the curtain. It was patient  
 5 privilege. I stood outside the curtain.  
 6 Q. So at no point in time did you ask any  
 7 doctor, any medical personnel, as to whether or  
 8 not they had drawn blood from Mr. LaFrenier?  
 9 A. At that time, no.  
 10 Q. At some point in time did you do that?  
 11 A. I didn't ask about the drawing of  
 12 blood, no.  
 13 Q. Did you ask about whether or not there  
 14 was anything found in his blood that would be  
 15 indicative of an illness or drugs or anything  
 16 like that?  
 17 MR. TEHAN: You're asking her did she  
 18 ask anyone that at any time?  
 19 MR. GALLAGHER: Yes.  
 20 MR. TEHAN: Okay.  
 21 A. Regarding being under the influence of  
 22 drugs, no. I did not.  
 23 Q. Did you have any conversation as to  
 24 whether or not the medical people at the hospital

Page 76

1 made a determination as to whether or not Mr.  
 2 LaFrenier was suffering from any illness?  
 3 A. Yes, I did.  
 4 But now can we have a break?  
 5 MR. TEHAN: Absolutely.  
 6 Q. Sure.  
 7 (Short recess.)  
 8 Q. Did you have conversation with Mr.  
 9 LaFrenier when he was at the hospital?  
 10 A. Yes.  
 11 Q. Where did that conversation take  
 12 place?  
 13 A. Where?  
 14 Q. Yes.  
 15 A. In one of those little cubicle rooms  
 16 in the emergency room.  
 17 Q. What did you say and what did he say?  
 18 A. He asked questions, I answered.  
 19 Q. Do you recall what his questions were?  
 20 A. He asked -- he wanted to know what  
 21 happened, he wanted to know why he was there. He  
 22 wanted to know why he was sore. He wanted to know  
 23 why he was handcuffed to the gurney.  
 24 Q. What did you say in response to those

Page 77

1 questions?  
 2 A. I explained to him what had happened  
 3 prior to being at Leominster Hospital.  
 4 Q. At some point in time you made a  
 5 determination as to what crimes you thought that  
 6 Mr. LaFrenier had committed?  
 7 A. Yes.  
 8 Q. When did that occur in the sequence of  
 9 events?  
 10 A. Before we left the station in the  
 11 ambulance.  
 12 Q. Before you left the station in the  
 13 ambulance?  
 14 A. Yes.  
 15 Q. At that moment you made a  
 16 determination as to what you were going to charge  
 17 him with?  
 18 A. I had formed the idea of what he was  
 19 going to be charged with, yes.  
 20 Q. Did you discuss, prior to that point  
 21 in time, with any other officer, what the charges  
 22 should be, based upon what happened?  
 23 A. Yes.  
 24 Q. And who did you talk to?

Page 78

1 A. Officer Johnson and Officer Morrison.  
 2 Q. Did that conversation take place after  
 3 the breathalyzer was done?  
 4 A. Yes.  
 5 Q. Could you please recount that  
 6 conversation with those officers?  
 7 A. It was determined that I would go with  
 8 him to the hospital. Upon my return, it would be  
 9 after their shift, so I explained to him --  
 10 explained to both of them what charges I was  
 11 going to bring against Mr. LaFrenier.  
 12 Q. Did they respond to that, when you  
 13 told them, "These are the charges I'm going to  
 14 bring against Mr. LaFrenier"?  
 15 A. They agreed.  
 16 Q. Why was it that you told them that you  
 17 were going to bring these charges against Mr.  
 18 LaFrenier?  
 19 A. Because at that point John was --  
 20 Officer Johnson was in charge, so I was letting  
 21 him know what I was doing. And by the time I got  
 22 back from the hospital I knew it would be after  
 23 the end of their shift.  
 24 Q. Was it common practice for you that

Page 79

1 you would talk to a senior officer with regard to  
 2 what charges you would bring in connection to an  
 3 arrest?  
 4 A. That's my common -- that is my  
 5 practice.  
 6 Q. Did Officer Johnson ask you on what  
 7 facts do you base this charge?  
 8 MR. TEHAN: Well, I'll object as vague  
 9 with respect to "this charge".  
 10 MR. GALLAGHER: Let me withdraw that.  
 11 Q. Say, for example, he was charged, Mr.  
 12 LaFrenier, with resisting arrest. Correct?  
 13 A. Yes.  
 14 Q. When you told Officer Johnson that Mr.  
 15 LaFrenier should be charged with resisting arrest  
 16 did Officer Johnson ask you, "On what facts do  
 17 you base that decision?"  
 18 A. No.  
 19 Q. Of course, a decision was made not to  
 20 charge him with driving under the influence.  
 21 A. Yes.  
 22 Q. With regard to the assault and battery  
 23 on you, did Officer Johnson ask you on what facts  
 24 do you come to the conclusion that Mr. LaFrenier

Page 80

1 should be charged with that?  
 2 A. No.  
 3 Q. And the disorderly person, did Officer  
 4 Johnson ask you on what facts you come to the  
 5 determination that Mr. LaFrenier should be  
 6 charged with that?  
 7 A. No.  
 8 Q. In the past, with regard to other  
 9 arrests, have you spoken to Officer Johnson in  
 10 regard to what you intend to charge?  
 11 MR. TEHAN: That's prior to this event?  
 12 MR. GALLAGHER: Yes, prior to this  
 13 event.  
 14 MR. TEHAN: Okay.  
 15 A. I don't understand. Do you mean do I  
 16 call Mr. Johnson every time I make an arrest? I  
 17 don't understand.  
 18 MR. TEHAN: He'll ask them, you'll  
 19 answer them. He'll try again.  
 20 THE WITNESS: Okay.  
 21 Q. On prior arrests have you spoken to  
 22 Officer Johnson and told him, "This is what I  
 23 intend to charge the person with"?  
 24 A. Not -- no, not that I recall.



<p style="text-align: right;">Page 89</p> <p>1 Q. You had mentioned, if my notes are                  2 correct, that there was, at least in part, a                  3 dazed and confused state of Mr. LaFrenier that                  4 comprised the basis for your OUI suspicious, is                  5 that correct?                  6 A. Yes.                  7 Q. Would you state for us, please, in one                  8 spot, so to speak, everything he did, didn't do,                  9 said or didn't -- I'm sorry. Everything he did,                  10 said that led you to that suspicion, and that                  11 conclusion, that he was in a dazed and confused                  12 state?                  13 A. For the entire stop?                  14 Q. Yes, please.                  15 A. He was dazed and confused, didn't                  16 understand where he was. His demeanor, his                  17 language was slurred -- his voice was slurred. He                  18 was confused when asked a question. Thought he                  19 was in one place -- thought he was in New                  20 Hampshire, thought he was going to work, thought                  21 he was coming home. Didn't know where he was.                  22 Unable to open a cigarette pack. His -- he wasn't                  23 steady on his feet. Unable to control his                  24 walking. Unable to lean up against a car, perform</p>	<p style="text-align: right;">Page 91</p> <p>1 true?                  2 A. Correct.                  3 Q. Why was that?                  4 A. He posed a threat to me, in my                  5 opinion.                  6 Q. How so? What was that threat?                  7 A. I don't believe he was in his right                  8 mind to be driving.                  9 Q. And why was that a threat to you --                  10 was it a threat to you personally?                  11 A. No, it was a threat in my mind.                  12 Q. A threat toward whom?                  13 A. The public. Public safety.                  14 Q. After you were able to cuff Mr.                  15 LaFrenier's -- I believe you said left hand --                  16 but before you were able to cuff his right hand,                  17 what was he doing with the unsecured cuff?                  18 A. Flailing around, trying to get away,                  19 pushing me and hitting me.                  20 Q. Was that of concern to you, the                  21 flailing around?                  22 A. Yes.                  23 Q. Would you describe exactly what he was                  24 doing?</p>
<p style="text-align: right;">Page 90</p> <p>1 simple tasks like leaning up against a car or                  2 walking.                  3 Q. At the point where you asked Mr.                  4 LaFrenier to exit his vehicle what were you                  5 planning to do?                  6 A. Try to find out why he was in the                  7 state that he was.                  8 Q. Did you have any plan of administering                  9 field sobriety tests?                  10 A. If it got to that point, yes.                  11 Q. Did you administer them?                  12 A. Didn't get to that point, no.                  13 Q. And why was that?                  14 A. Because Mr. LaFrenier was                  15 uncooperative, unable to perform the tests.                  16 Q. What was your initial purpose in going                  17 to his vehicle that day?                  18 A. To see if he was okay, what kind of                  19 distress he was under.                  20 Q. You mentioned in your direct testimony                  21 that Mr. LaFrenier said he wanted to leave. Is                  22 that correct?                  23 A. Yes.                  24 Q. And you did not want him to, is that</p>	<p style="text-align: right;">Page 92</p> <p>1 A. He was throwing his arms around, which                  2 caused the cuff to be spinning, and it was open,                  3 so the hook was there, and he was swinging it                  4 towards me, so I was concerned I would get hit                  5 with it.                  6 Q. Did you receive any training                  7 concerning dangers posed by that situation?                  8 A. Yes.                  9 Q. What were you taught?                  10 A. To secure and to go up -- as I said,                  11 the -- what do you call it -- the continuum                  12 force.                  13 Q. Is the first step, as you were                  14 trained, in the force continuum, verbal commands?                  15 A. Yes.                  16 Q. Did you use them?                  17 A. Yes.                  18 Q. Did they get a response?                  19 A. No.                  20 Q. Is the next step the use of force or                  21 physical skills?                  22 A. Yes.                  23 Q. Did you use that?                  24 A. Yes.</p>



Page 93

1 Q. What did you employ in that regard?

2 A. I used knee strikes, I used hand

3 maneuvers to push him back down.

4 Q. Did you testify earlier the knee

5 strikes were part of your training?

6 A. Yes.

7 Q. What were you trained in terms of when

8 to apply such a strike and how to apply it?

9 A. Verbal commands aren't working, you

10 bring it up to the next step. At that point if

11 you need to move on, you do, but you start with

12 the strike.

13 Q. Were you given any training

14 specifically as to how those strikes are to be

15 administered?

16 A. Yes.

17 Q. What were you taught?

18 A. Where to strike them on the leg, what

19 part of the leg to strike for the best effective

20 results.

21 Q. Where were you taught to strike?

22 A. Roughly midway on the left -- on the

23 side of your leg -- I don't remember the name of

24 it, but --

Page 94

1 Q. Is it midway along the thigh?

2 A. Along the thigh.

3 Q. Is that where you administered your

4 strikes to Mr. LaFrenier?

5 A. Some of them were there. That's where

6 they were intended to go, yes.

7 Q. At any point did you kick Mr.

8 LaFrenier?

9 A. Not that I'm aware of.

10 Q. Did you punch him?

11 A. Not that I'm aware of.

12 Q. Did you use any force other than that

13 supplied by your own body?

14 A. No.

15 Q. Did you use a nightstick on Mr.

16 LaFrenier?

17 A. No, I did not.

18 Q. Did Officer Morrison use a nightstick

19 on Mr. LaFrenier?

20 A. No, he did not.

21 Q. Did Officer Morrison kick or punch Mr.

22 LaFrenier?

23 A. No, he did not.

24 Q. Did either of you utilize a so-called

Page 95

1 OC, or pepper spray, on Mr. LaFrenier?

2 A. No.

3 Q. And certainly neither of you

4 discharged or brandished a firearm on this day,

5 is this true?

6 A. That's true.

7 Q. How far away from the police station

8 was the locus of this stop?

9 A. Oh, yards.

10 Q. Did you have any discussion with Mr.

11 LaFrenier en route to the station?

12 A. No.

13 Q. My brother asked you if at any point

14 any officer demanded that Mr. LaFrenier take a

15 breathalyzer test, correct?

16 A. He did ask that, yes.

17 Q. Okay. And did anyone make such a

18 demand?

19 A. No one demanded it, no.

20 Q. Did anyone attempt to persuade Mr.

21 LaFrenier to take a breathalyzer test?

22 A. His options in what the results --

23 each result meant was explained to him, yes.

24 Q. Did he initially express any

Page 96

1 reluctance to take the breathalyzer?

2 A. At first he said -- at first he said

3 that there was -- there was no need, because he

4 hadn't been drinking. So he didn't understand why

5 he would have to take the breathalyzer.

6 Q. Did anyone make a response to that

7 comment?

8 A. It was explained to him that the

9 breathalyzer would show that he hadn't had

10 anything to drink, and it would rule out that he

11 was under the influence of alcohol, and then we

12 could move to find out what was wrong.

13 Q. Did he make any response to that

14 statement?

15 A. That he thought it was a good idea to

16 take the breathalyzer.

17 Q. Who was the person who administered

18 the breathalyzer?

19 A. Officer Morrison.

20 Q. To your knowledge, was he trained in

21 that regard?

22 A. Yes.

23 Q. I believe you mentioned that at some

24 point someone asked Mr. LaFrenier if there was

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1 anyone they could speak to about him. Is that  
 2 true?  
 3 A. Yes.  
 4 Q. And who made that request?  
 5 A. It was a group effort. It was Officer  
 6 Johnson, myself and Officer Morrison.  
 7 Q. What was your purpose in that  
 8 discussion?  
 9 A. To determine if he had a medical  
 10 situation.  
 11 Q. Why were you concerned in that regard?  
 12 A. Because he just wasn't right. He  
 13 wasn't under the influence of alcohol, but he  
 14 just wasn't right.  
 15 Q. Did he advise you of a person with  
 16 whom you might speak?  
 17 A. Yes.  
 18 Q. Whom did he tell you to call or  
 19 suggest that you call?  
 20 A. His wife.  
 21 Q. What information about his wife, if  
 22 any, did he provide you to facilitate your  
 23 calling her?  
 24 A. That she was a nurse at a hospital in

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1 Worcester.  
 2 Q. Did he provide you with any further  
 3 information initially?  
 4 A. Just the hospital.  
 5 Q. Which hospital did he say?  
 6 A. UMass.  
 7 Q. Did he give you a phone number for  
 8 her?  
 9 A. He didn't know it.  
 10 Q. Did he give you a department in which  
 11 she works?  
 12 A. He didn't know it.  
 13 Q. Did those instances where he didn't  
 14 know his wife's phone number at work or her  
 15 department concern you?  
 16 A. I would assume it would be something  
 17 that a husband and wife would know.  
 18 Q. And when he apparently didn't, did  
 19 that cause you any concern?  
 20 A. That added to my suspicion that  
 21 something was going on with him.  
 22 Q. Was anyone ever in contact with Mr.  
 23 LaFrenier's wife?  
 24 A. Yes.

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1 Q. Who was that?  
 2 A. I was.  
 3 Q. And did you speak with her over the  
 4 phone?  
 5 A. Yes, I did.  
 6 Q. How did you find her?  
 7 A. Tracking her down through UMass.  
 8 Called UMass, and eventually found her.  
 9 Q. For about how long did you speak with  
 10 her?  
 11 A. About 20 minutes to a half an hour.  
 12 Q. How would you characterize your own  
 13 tone during that discussion?  
 14 A. Concern.  
 15 Q. And that of his wife?  
 16 A. Not as concerned.  
 17 Q. What do you recall saying to Mrs.  
 18 LaFrenier and her saying to you during that  
 19 discussion?  
 20 A. I explained the situation, and why Mr.  
 21 LaFrenier and I had met, and I asked if there was  
 22 any medical condition, was he on any prescription  
 23 drugs that I should know about, has he had any  
 24 medical procedures. All along those lines. And

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1 she was unaware of any medical condition other  
 2 than a cold. He had taken, I believe it was  
 3 Nyquil, and he was on a prescription drug, which  
 4 he decided not to take anymore, but it should  
 5 have no effect on him, as I described to her,  
 6 according to her.  
 7 Q. Did she tell you the name of the drug?  
 8 A. She did.  
 9 Q. What was the name that she gave you?  
 10 A. I would have to look at the notes.  
 11 Q. Would it refresh your memory if I told  
 12 you it was Cronetin?  
 13 A. That sounds right.  
 14 Q. Did Mrs. LaFrenier tell you anything  
 15 else during your discussion?  
 16 A. I don't know what you mean.  
 17 Q. Is there anything else that she said  
 18 to you that you haven't yet told us?  
 19 A. Not that I recall.  
 20 Q. Did you suggest to Mrs. LaFrenier that  
 21 perhaps her husband should be checked out at a  
 22 medical facility?  
 23 A. Yes.  
 24 Q. And did you tell her why you felt that

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1 would be wise?

2 A. Yes.

3 Q. What did you say?

4 A. I explained that he was confused, not

5 in his right mind. He took the breathalyzer, he

6 passed the breathalyzer, so he wasn't under the

7 influence of alcohol. She tells me he doesn't

8 have a medical condition so, therefore, I was

9 concerned about his medical well-being.

10 Q. Did she concur with your

11 recommendation?

12 A. She did.

13 Q. What did she say?

14 A. She said that she would agree with

15 that, and that I should call an ambulance, but I

16 would need to speak to him.

17 Q. To your knowledge, did Mr. LaFrenier

18 speak directly to his wife on the phone from the

19 station that day?

20 A. I do not recall them having a

21 conversation.

22 Q. Did you tell Mr. LaFrenier you had

23 spoken with his wife?

24 A. Yes.

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1 Q. Did you tell him that she felt it was

2 a good idea that he be checked out?

3 A. Yes.

4 Q. What response, if any, did he make?

5 A. Eventually he wanted an ambulance, and

6 thought it was a good idea.

7 Q. When you say "eventually" what are you

8 suggesting in that regard if anything?

9 A. At first he didn't think it was a good

10 idea, and just wanted to go home.

11 Q. Did you apprise Mr. LaFrenier before

12 you went to the hospital that there would be

13 charges against him in any event?

14 A. Not at that time. We were more

15 concerned about getting him medical, and finding

16 out what was wrong.

17 Q. Who summonsed medical assistance?

18 A. Well, we called dispatch upstairs, and

19 she dispatched them.

20 Q. Did someone arrive?

21 A. Yes.

22 Q. Do you know what ambulance service

23 arrived?

24 A. We have our own in town.

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1 Q. Who runs your EMS? Is it the fire

2 department?

3 A. The fire department. It's from the

4 fire department. I don't know who's in charge of

5 it.

6 Q. Did you ride in the ambulance with Mr.

7 LaFrenier to the hospital?

8 A. No.

9 Q. How did you get there?

10 A. By cruiser. I drove a cruiser.

11 Q. Did you follow directly behind the

12 ambulance?

13 A. Yes, I did.

14 Q. Was Mr. LaFrenier cuffed in the

15 ambulance?

16 A. To the gurney.

17 Q. Was he a prisoner in your custody

18 during that trip?

19 A. Yes.

20 Q. I believe you mentioned that before

21 you left for the hospital you discussed with

22 Officer Morrison and Officer Johnson your

23 contemplated charges, is that correct?

24 A. Yes.

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1 Q. Were both of those officers more

2 experienced than you?

3 A. Yes.

4 Q. And, again, Johnson was your officer

5 in charge, is that correct?

6 A. On that day, yes.

7 Q. And you indicated that they agreed

8 with you with respect to the charges you were

9 considering. Is that true?

10 A. Yes.

11 Q. What charges did you lodge against Mr.

12 LaFrenier?

13 A. A&B on a P.O..

14 Q. Does that mean assault and battery on

15 a police officer?

16 A. Assault and battery on a police

17 officer for both myself and Officer Morrison,

18 disorderly person and resisting.

19 Q. As we look at your Exhibit 1, do you

20 see that on the criminal complaint -- that is

21 the first sheet -- the complainant is Daniel

22 Morrison?

23 A. Yes.

24 Q. Whose charges are these that we're



<p style="text-align: right;">Page 105</p> <p>1 discussing?</p> <p>2 A. They're my charges.</p> <p>3 Q. Do you know why his name appears as</p> <p>4 complainant?</p> <p>5 A. Because at the time Dan's assignment</p> <p>6 was the court officer. So he would do that for</p> <p>7 all cases that came from Townsend P.D..</p> <p>8 Q. When you say he was the court officer,</p> <p>9 what do you understand his duties to be in that</p> <p>10 regard?</p> <p>11 A. He represented the Townsend Police</p> <p>12 Department in Ayer District Court.</p> <p>13 Q. Running through the charges, the first</p> <p>14 charge is an assault and battery on yourself, is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And on what basis or on what facts did</p> <p>18 you bring that charge?</p> <p>19 A. When Mr. LaFrenier put his hands on me</p> <p>20 and pushed me and started to resist.</p> <p>21 Q. With respect to the next assault and</p> <p>22 battery charge with respect to Officer Morrison,</p> <p>23 what was the factual basis for you bringing that</p> <p>24 charge?</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Do you know what a fog line is?</p> <p>2 A. Yes.</p> <p>3 Q. Are there fog lines on that road?</p> <p>4 A. They're there, but there's parts that</p> <p>5 it no longer exists.</p> <p>6 Q. Does the fog line on Route 13 traverse</p> <p>7 or go along the outer edge of the pavement?</p> <p>8 A. Yes.</p> <p>9 Q. Where was Mr. LaFrenier's car with</p> <p>10 respect to the fog line in terms of distance from</p> <p>11 it when you pulled up?</p> <p>12 A. About three feet.</p> <p>13 Q. And how far, therefore, was his</p> <p>14 driver's door from the travel lane?</p> <p>15 A. When it was closed? About three feet.</p> <p>16 Q. Okay. Now, you mentioned that Mr.</p> <p>17 LaFrenier pushed you, is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did he do so on more than one</p> <p>20 occasion?</p> <p>21 A. Yes.</p> <p>22 Q. On one occasion did his push put you</p> <p>23 in fear?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. When he was pushing, swinging at Dan</p> <p>2 with his arms.</p> <p>3 Q. Did you see that happen?</p> <p>4 A. Yes.</p> <p>5 Q. With respect to the crime that you</p> <p>6 charged Mr. LaFrenier with of being a disorderly</p> <p>7 person, what conduct of his gave rise to that</p> <p>8 charge?</p> <p>9 A. Just his demeanor. His -- being in a</p> <p>10 public way, causing great commotion, and public</p> <p>11 safety issues. Along --</p> <p>12 Q. Along those lines?</p> <p>13 A. Along those lines.</p> <p>14 Q. To backtrack just a minute, this was</p> <p>15 an arrest that occurred on Route 13, is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a state highway?</p> <p>19 A. Yes.</p> <p>20 Q. And did you indicate earlier that</p> <p>21 there's one lane in each direction?</p> <p>22 A. Yes, north and south.</p> <p>23 Q. Is there a breakdown lane?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. And why was that?</p> <p>2 A. Because my back was towards Route 13,</p> <p>3 and when he pushed me I was heading in that</p> <p>4 direction.</p> <p>5 Q. Into traffic?</p> <p>6 A. Into traffic.</p> <p>7 Q. Mr. LaFrenier, in fact, was charged</p> <p>8 with resisting arrest, is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. What facts gave rise to your bringing</p> <p>11 that charge?</p> <p>12 A. Because his resisting -- as I was</p> <p>13 putting the cuffs on, fighting, trying to walk</p> <p>14 away, trying to leave the scene with the cuff on.</p> <p>15 Q. You approached Mr. LaFrenier's car in</p> <p>16 a marked cruiser?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have your lights on?</p> <p>19 A. Yes.</p> <p>20 Q. Were you in full uniform?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have a patch on your shoulder</p> <p>23 reflecting the insignia of the Townsend Police</p> <p>24 Department?</p>